

Appl. No. 10/697,910
Examiner: HEWITT, JAMES M, Art Unit 3679
In response to the Office Action dated June 7, 2005

Date: September 7, 2005
Attorney Docket No. 10111392

REMARKS

Responsive to the Office Action mailed on June 7, 2005 in the above-referenced application, Applicant respectfully requests amendment of the above-identified application in the manner identified above and that the patent be granted in view of the arguments presented. No new matter has been added by this amendment.

Present Status of Application

Claims 1-4 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19, 30 and 31 of copending Application Serial No. 09/886,030. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Horvath et al (U.S. Patent No. 4,707,027). Claims 5, 7-9 and 11-12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Horvath et al. Claims 6, 10 and 13-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In this paper, claims 1, 3, 5 and 9 are amended to recite that the first and second valves are mechanically-controlled. Support for this amendment can be found on page 11, line 27 to page 12, line 9 of the application. Claims 1 and 3 are further amended to cancel the relay limitation. Claims 8, 12 and 16 are amended accordingly. New dependent claims 17-23 are added.

Reconsideration of this application is respectfully requested in light of the amendments and the remarks contained below.

Allowable Subject Matter

Applicant thanks the Examiner for his indication in the Office Action that claims 6, 10 and 13-16 would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

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Double Patenting

Claims 1-4 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19, 30 and 31 of copending Application Serial No. 09/886,030. The provisional rejections are respectfully traversed for the reasons as follow.

The Examiner indicates that while the conflicting claims are not identical, the claimed first and second valve of copending Application Serial No. 09/886,030 are sufficiently broad in scope to be "inclusive" of the first and second manually controlled valves of original claims 1 and 3. Thus, the Examiner appears to base the rejection on the domination of claims 1 and 3 of this application by claims 19, 30 and 31 of copending Application Serial No. 09/886,030.

MPEP 804.II reads in part:

Domination and double patenting should not be confused. They are two separate issues. One patent or application "dominates" a second patent or application when the first patent or application has a broad or generic claim which fully encompasses or reads on an invention defined in a narrower or more specific claim in another patent or application. ***Domination by itself, i.e., in the absence of statutory or nonstatutory double patenting grounds, cannot support a double patenting rejection. In re Kaplan***, 789 F.2d 1574, 1577-78, 229 USPQ 678, 681 (Fed. Cir. 1986). [Emphasis added]

Obviousness-type double patenting is analogous to a failure to meet the nonobviousness requirement of 35 U.S.C. 103. Therefore, the analysis employed in an obviousness-type double patenting rejection parallels the guidelines for analysis of a 35 U.S.C. 103 obviousness determination. See MPEP 804.II.B.1.

As amended, claims 1-4 of the present application recite a first and second mechanically controlled valve opened by the first and second switch. This feature is not found in claims 19, 30 and 31 of copending Application Serial No. 09/886,030. Furthermore, claims 1 and 3 of the present application recite a second switch and a fourth switch, while claims 19, 30 and 31 of

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compending Application Serial No. 09/886,030 are directed to a microswitch. Thus, the claims at issue differ in scope. Applicant therefore submits that the claimed subject matter of claims 1-4 of the present application is both different in scope and patentably distinct over that of claims 19, 30 and 31 of compending Application Serial No. 09/886,030.

For at least these reasons, withdrawal of the provisional double patenting rejections of claims 1-4 is respectfully requested.

Rejections Under 35 U.S.C. 102(b)

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Horvath et al (U.S. Patent No. 4,707,027). Claims 5, 7-9 and 11-12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Horvath et al. To the extent that the grounds of the rejections may be applied to the claims now pending in this application, they are respectfully traversed.

Horvath et al teach a pneumatically cushioned vehicle seat including an air pump 14, a solenoid valve 16, and a switch 22. The switch 22 activates the solenoid valve 16 and the air pump 14. It is noted that in Horvath et al, the solenoid valve 16 is electrically controlled by the switch 22.

To anticipate a claim, a reference must teach every element of the claim. In this regard, the Federal Circuit has held:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

"The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

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As amended, claims 1, 3, 5 and 9 recite that the first and second valves are *mechanically-controlled*. This feature is not shown in Horvath et al; where solenoid valve 16 is *electrically controlled* by the switch 22.

As Horvath et al fail to teach or suggest a first switch for activating an air pump and opening a first mechanically-controlled valve, or a third switch for activating the air pump and opening a second mechanically-controlled valve, it is Applicant's belief that the reference fails to teach or suggest all the limitations of claims 1, 3, 5 and 9. Applicant therefore respectfully requests that the rejections of claim 1, 3, 5 and 9 be withdrawn and the claims passed to issue. Insofar as claims 2, 4, 6-8 and 10-16 depend from claims 1 and 5 either directly or indirectly, and therefore incorporate all of the limitations of claims 1 and 5, it is Applicant's belief that these claims are also in condition for allowance.

Rejections Under 35 U.S.C. 103(a)

Claims 5, 7-9 and 11-12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Horvath et al. For the same reasons discussed above, it is Applicant's belief that Horvath et al fail to teach or suggest a first switch for activating an air pump and mechanically opening a first mechanically-controlled valve. It is therefore Applicant's belief that claim 5 is allowable over Horvath et al. Furthermore, claims 7-9, and 11-12 are believed to be allowable by virtue of their dependency from claim 5.

New Claims 17-23

Insofar as claims 17-23 depend from claims 1 and 5 either directly or indirectly, and therefore incorporate all of the limitations of claims 1 and 5, it is Applicant's belief that these claims are also in condition for allowance.

Information Disclosure Statement

Applicant notes that an information disclosure statement was filed on May 27, 2005. Applicant respectfully requests that the Examiner indicate that he has considered the information disclosed the statement by returning a copy of the Form PTO-1449 submitted therewith with his initials or other appropriate mark beside each listed reference.

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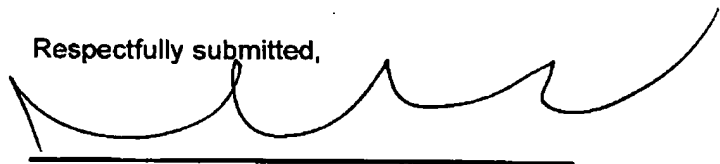
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Conclusion

The Applicant believes that the application is now in condition for allowance and respectfully requests so.

Respectfully submitted,



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